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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: FOSAMAX PRODUCTS  
LIABILITY LITIGATION

*This Document Relates to:*

Carrie Smith, et al.

v. Merck &amp; Co., Inc., et al.

Case No: 1:07-cv-9564-JFK

MDL NO. 1789  
1:06-md-1789 (JFK)

## DECLARATION OF THEODORE V. H. MAYER

THEODORE V. H. MAYER declares as follows:

1. I am an attorney admitted to practice before this Court and a partner at Hughes Hubbard & Reed LLP, attorneys for Defendant Merck & Co., Inc. (“Merck”). I am familiar with the facts set forth herein. I make this declaration based on my own personal knowledge and the business records of the Firm.

2. I make this declaration in support of the Motion of Defendant Merck & Co., Inc. to Dismiss with Prejudice for Failure to Provide Plaintiff Profile Form.

3. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated October 30, 2007 is attached hereto as Exhibit 1.

4. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated January 2, 2008 (inadvertently written as "2007") is attached hereto as Exhibit 2.

5. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated February 4, 2008 is attached hereto as Exhibit 3.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/

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Theodore V. H. Mayer

Executed this  
16<sup>th</sup> day of April, 2008